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Legal Aid in Juvenile Justice: Ensuring Access to Fair Representation and Protection

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Abstract

Children are the foundation on which the dynamic and vibrate future of country are based. So, they are the valuable asset of country. By nature, they are so innocent and delicate that one can easily mould their mind and inclined them into criminal activities. Juvenile delinquency is the participation of a minor child in illegal behavior or criminal activities. This problem of juvenile delinquency is not new. This happens in all societies in simple as well as complex form. In India this problem is gradually increasing day by day and various factors are responsible for its birth and increasing rate. But even then, these children cannot be ignored. In order to protect the minor children from delinquency, for rehabilitation and socialization of delinquents children many international agreements and national laws are enacted and implemented but it all futile until justice is out of reach from delinquent children who don't have sufficient resources. This research paper aims to explore the idea of legal aid in India with special reference to juvenile Justice. Juvenile delinquency is a critical issue that affects the society at large as the children are the hope of future. India has witnessed significant changes into approach to dealing with juvenile offenders. This paper throws the light on the importance of legal aid in Indian judicial system, its international and National perspective. The study examines the issues and challenges in providing legal aid to juvenile delinquents. Finally, the paper offers recommendations for policy improvements in providing legal aid to juvenile delinquents in India.

Keywords: Juvenile justice, Legal aid, international agreements and National laws.

INTRODUCTION

Any nation's foundation for the future is its children. As they grow into the nation's leaders and wealth producers, they take on the role of defending and tending to the local human population. These kids grow and change at various rates, and they also acquire diverse worldviews. They improve their capacity for abstract thought and form their own opinions on social and political matters. They acquire the capacity for long-term planning and goal-setting. Additionally, there is a propensity to evaluate oneself against others. They desire for autonomy from their parents

and a distinct identity. This is the age at which acceptance and peer pressure become crucial. They also tend to exhibit indulgence in love and long-term relationships, as well as strong romantic and sexual notions.

Nonetheless, these are typical alterations, and in general, nothing unusual is happening. When these young people start exhibiting delinquent behavior and interfere with law and order, issues occur. Overall, it is seen that delinquency/criminality rises in adolescence and declines with age. This pattern of crime is prevalent in historical, geographic, and cultural contexts. Adolescents and young adults are more likely to indulge in traditional crimes. Children who have broken the law are those who have committed an infraction and require care and protection. These children are often those who have been neglected, abandoned, mistreated, tortured, involved in drug trafficking, victims of natural disasters, and so forth. The issue of juvenile delinquency has existed ever since society was first conceptualized. Regardless of how sophisticated or basic a society is, it is an essential component. In response to this issue, on January 15, 2016, the Juvenile Justice (Care and Protection of Children) Act, 2015, came into effect. In essence, the Juvenile Justice Act treats children who are in trouble with the law and who require care and protection by providing for their basic needs, including development, treatment, care, and social reintegration through the use of a "child friendly approach" in the resolution of cases that are in the best interests of the children and the promotion of their rehabilitation through the institutions and bodies established under the act.[1]

In order to protect the minor children from delinquency, for rehabilitation and socialization of delinquent's children many international agreements and national laws are enacted and implemented but it all futile until justice is out of reach from delinquent children who don't have sufficient resources. So Legal assistance is essential to preventing juvenile accused from being denied justice only because they are unable to pay for legal representation. It guarantees them access to legal counsel, which is necessary to guarantee a just trial. In the absence of legal assistance, individuals with the means to retain the top attorneys would have a significant advantage in the criminal court system. In addition, legal aid is essential for defending the rights of those who are accused. It guarantees that they understand their rights and that nothing will be done to infringe upon them during the course of the inquiry and trial. It assists in averting erroneous convictions and miscarriages of justice, which may have grave repercussions for innocent people and their families.

[1] Ahuja Sahil (2019) juvenile justice and legal aid, available online at www.indianjournal.com

Access to justice is another goal of legal assistance, and it is a cornerstone of every democracy. It guarantees that everyone, regardless of financial condition, has access to justice, not only those who can afford to pay for it.

Concept of Free Legal Aid

The idea of "legal aid" is intrinsic to its role as a crucial channel for obtaining justice. According to the definition of access to justice, which is "the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards," it is essential to the defence of human rights.[2]

As per the United Nations Principles and Guidelines, legal aid encompasses free legal advice, assistance, and representation for individuals who are detained, arrested, or imprisoned, suspected of a crime, or charged with one, as well as free legal representation for victims and witnesses throughout the criminal justice process for those who lack the necessary funds or when the interests of justice demand it. Additionally, "legal aid" is meant to encompass the ideas of legal education, information access, and other services offered to individuals via restorative justice and alternative dispute resolution procedures.[3]

In keeping with the UN Principles and Guidelines, which have a more comprehensive definition, "legal aid" is defined for the purposes of this research as "legal advice, assistance and/or representation at little or no cost to the person designated as entitled to it."[4] The definition of "legal aid" includes services rendered by solicitors and paralegals in criminal as well as civil and administrative matters to people who are impoverished, disenfranchised, or in need of special legal protection in order to exercise their rights, but this is because the study's purview extends beyond legal aid for criminal matters. These covers giving legal counsel, representing you in court or before other State bodies, helping you prepare documents and pleadings, mediating disputes, and other support.[5]

International Perspectives of Legal aid for Juvenile Offenders

[2] United Nations Development Programme, Access to Justice Practice Note (2004). United Nations Office on Drugs and Crime, Access to Justice: Legal Defence and Legal Aid (2006).

[3] General Assembly resolution 67/187, para. 8.

[4] The UN Principles and Guidelines states that “the term ‘legal aid’ is defined as “legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.”

[5].https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf

Finding the best strategies for protecting and developing juvenile rights is the aim of international juvenile justice instruments. Global instruments focusing on the development, care, and protection of children have been developed from the beginning of the 20th century. The Declaration on the Rights of the Child was approved by the League of Nations in 1924, Universal Declaration of Human Rights 1948, Convention on the Rights of the Child 1989.Besides these international declarations, covenants, and conventions, there are four main international instruments promoting juvenile justice such as the Beijing Rules of the United Nations, the Riyadh Guidelines for Juvenile Delinquency Prevention, the Havana Rules for the Protection of Juveniles Deprived of Liberty, and the Guidelines for Action on Children in the Criminal Justice. These instruments make the provision for legal aid to juvenile offenders in criminal cases.

According to Beijing Rules of the United Nations "The minor has the right to legal representation throughout the proceedings and, if available in the nation, the right to ask for free legal assistance."[6]

Every minor has the right to legal representation under the Havana Rules. Every juvenile has the right, under the regulations, to apply for free legal help when the state offers it. Children will communicate with their legal counsel often, and the privacy of that communication will be maintained.[7]

Regarding children's rights to free legal assistance, the CRC declares that Legal or other suitable support for the youngster in preparing and presenting his or her defence must be guaranteed. The CRC does mandate that help be given to the kid; this aid need not always be legal, but it must be suitable. States parties are free to choose how this help is delivered, but it ought to be given without charge. The Committee suggests that the State parties make every effort to supply sufficient, qualified legal support, such as knowledgeable solicitors or paralegals.[8]

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[6] Rule 15.1 of Beijing Rules, https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf, visited on 21 October 2023

[7] Rule 18 (a) Havana Rules, https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf, visited on 21 October 2023

[8] UN Committee on the Rights of the Child (CRC), CRC General Comment No 10 (2007): Children's rights in juvenile justice, online:<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqIkirKQZL, visited on 22 October 2023

The 1948 Universal Declaration of Human Rights states that the right to free legal assistance is recognized in Article 8 of the statement. If someone's fundamental rights are violated, they have the right to file a complaint with the National Tribunal and get a prompt and effective redress. In contrast, Article 10 of the Declaration acknowledges the human right to complete equality and places special emphasis on the right to a fair trial by unbiased, independent juries. In addition, Article 14 guarantees everyone the freedom to apply for and obtain protection from prosecution in other nations.[9]

According to the 1996 International Covenant on Civil and Political Rights "Everyone must be treated equally before courts and tribunals, according to Article 14 of the treaty. Everyone has the right to a fair trial in public before impartial, capable tribunals or courts. The accused must be made aware of the offence and given the time to be ready."[10]

National Perspective of Legal Aid for Juvenile Offenders

In the private market economy of law, India's legal aid programmes did not offer legal assistance and advice in a competent and effective way. The scope of its legal assistance programmes remained unclear in post-independence India. Schemes for legal assistance were formed after independence under the supervision of Trevor Harris J. of the Calcutta High Court and NH Bhagwati J. of the Bombay High Court.[11] In order to provide recommendations for transforming the legal aid programme into a useful tool for enforcing social justice, the legal commission was also sent the legal aid issue. A committee headed by PN Bhagwati J was constituted by the Indian government to oversee the efficient execution of the Legal Aid Scheme. It promoted the idea of Nyaylayas and Legal Aid Camps in rural regions. The Committee suggested including the idea of legal aid in the constitution. Thus, the Directive Principles of State Policy included Article 39A.[12]

The Indian Constitution states in Article 39-A that each State shall ensure the operation of the legal system justice on the basis of equal opportunity and shall, in particular, provide free legal aid, by appropriate legislation or schemes or in any other way, to ensure that the Constitution

[9] https://viamediationcentre.org/readnews/NDQx/Legal-Aid-National-and-International-Perspective

[10] Ibid

[11] Rajeev Dhawan (Ed). Justice Nh Bhagwati (1334) and Justice Trevor Harris of Calcutta," Law as Struggle: Public Interest Litigation in India" (1994) 36 JILI 325.

[12] Rajeev Dhawan," Law as Struggle: Public Interest Litigation in India" (1994) 36 JILI 302.

is fulfilled in letter and spirit and that the impoverished and marginalized sections of society have access to equal justice.[13]

The State must provide equality before the law and a judicial system that upholds justice by giving everyone equal opportunities, as mandated by Articles 14 and 22(1). Legal assistance works to guarantee that the Constitution's promises are kept in law and spirit and that the weaker, impoverished, and disadvantaged groups in society have equal access to justice.

The Criminal Procedure Code, Section 304, states that providing legal aid (at state cost) is a constitutional responsibility that begins the moment the accused is brought before the magistrate and continues each time he is brought before the magistrate for detention.

India has ratified both the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

In 1980, a national committee was established to manage legal assistance schemes across the nation, with Hon. Mr. Justice P.N. Bhagwati, who was then a judge of the Supreme Court of India, serving as its chairman. This Committee began to oversee legal aid activities across the nation and was renamed as the Committee for Implementing Legal Aid Schemes (CILAS).[14]

The Legal Services Authorities Act was passed in 1987 in order to provide a formal foundation for legal aid schemes across the nation in a standard manner. On November 9, 1995, this Act was eventually put into effect following the introduction of necessary revisions by the 1994 Amendment Act. Article 39 and 39A of the Indian Constitution clearly state that legal services authorities are constituted to provide free legal services to the weaker sections of society in order to ensure that no citizen is denied justice because of financial or other disabilities. The Legal Services Authorities Act, 1987 clearly satisfies this state mandate[15].

Legal Services Authorities Act, 1987

The list of people who are eligible for legal services is outlined in Section 12 of the Legal Services Authorities Act 1987 and includes the following:[16]

(a) Members of Scheduled Castes or Scheduled Tribes;

(b) Victims of human trafficking or beggars as defined by Article 23 of the Constitution;

(c) A child or a lady;

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[13] Article 39 A of constitution of India, https://www.legalserviceindia.com/legal/article-5580-legal-aid-in-india.html,visited on 24 October 2023

[14]https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001809/M027655/ET/1520850483legalaidinjjsystem.pdf

[15] Ibid

[16] https://indiankanoon.org/doc/81155499/#:~:text=the%20Supreme%20Court.%5D-,2%5B(h)%20in%20receipt%20of%20annual%20income%20less%20than,the%20Central%20Government%2C%20if%20the, visited on 10 October 2024

(d) An individual with mental illness or other disability;

(e) An individual experiencing unjustifiable hardship, such as being a victim of an industrial disaster, a mass disaster, ethnic conflict, a caste atrocity, a flood, a drought, or an earthquake; or

(f) A worker in industry; or

(g) in custody, which includes custody in a protective home as defined by Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home as defined by Juvenile Justice Act, 1986 (53 of 1986); or in a mental health facility or institutionalized care facility as defined by Mental Health Act, 1987 (14 of 1987); or

(h) if the case is before a court other than the Supreme Court, and if the case is before the Central Government, less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government.

Section 13 of the Act further state that

1. Individuals who meet any or all of the requirements outlined in Section 12 are eligible to get legal assistance, as long as the relevant Authority is convinced that the individual in question has a solid case to prosecute or defend.

2) If a person provides an affidavit about his income, it may be considered adequate to provide him the right to legal services under this Act, unless the relevant Authority has grounds to doubt it.[17]

The Free Legal Services consist of:

a) The payment of all expenses associated with any legal procedures, including court and process fees;

b) Offering legal representation in court cases;

c) Obtaining certified copies of court orders and other documents and providing them to the relevant parties.

d) Drafting an appeal, publishing a paper book, and translating and printing court papers.

Authorities Constituted Under Legal Services Authorities Act, 1987

[17] Section 13 of Legal Services Authorities Act, 1987, https://indiankanoon.org/doc/81155499/#:~:text=the%20Supreme%20Court.%5D-,2%5B(h)%20in%20receipt%20of%20annual%20income%20less%20than,the%20Central%20Government%2C%20if%20the, visited on 10 October 2023

The National Legal Services Authority (NALSA) is the highest authority established to provide laws, rules, policies, and cost-effective programmes that State Legal Services Authorities can use to provide legal services to the public. Additionally, it gives money and grants to NGOs and State Legal Services Authorities so they may run legal aid initiatives and schemes.

A State Legal Services Authority (NALSA) is established in each State to implement the directives and policies of the Central Authority. It is required to regularly carry out the following primary duties:

I. To offer qualified individuals free and competent legal services;
II. To establish up Lok Adalat's for the peaceful resolution of conflicts; and
III. To arrange legal awareness programmes in rural regions as well as to perform Lok Adalat's throughout the State and provide legal services to the public.

Chief Justice of the State High Court, the Authority's Patron-in-Chief, is in charge of the State Legal Services. The High Court accepts nominations for its Executive Chairman from among its active or retiring judges. Each district establishes a District Legal Services Authority to carry out its own legal aid programmers and schemes. Its ex-officio chairman is the District Judge of the District. In order to organize the legal services provided in the Taluk and to plan Lok Adalat's, Taluk Legal Services Committees have also been established for each Taluk, Mandal, or set of Taluks or Mandals. Each Taluk Legal Services Committee is presided over by an ex-officio Chairman who is a senior Civil Judge practicing within the Committee's jurisdiction.[18]

Legal Aid and Juvenile Justice in India

In essence, the Juvenile Justice Act treats children who are in trouble with the law and who require care and protection by providing for their basic needs, including development, treatment, care, and social reintegration through the use of a "child friendly approach" in the resolution of cases that are in the best interests of the children and the promotion of their rehabilitation through the institutions and bodies established under the act.

The Juvenile Justice Act of 2015's Section 8 (3) (b) stipulates that the Juvenile Justice Board's duty is to guarantee that the kid can obtain legal help through the legal services institution.

According to Section 30(xvii), one of the Child Welfare Committee's duties and obligations is to help children get the proper legal representation.

[18]https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001809/M027655/ET/1520850483legalaidinjjsystem.pdf

According to Section 53(1) (viii), institutions recognized under the act to provide rehabilitation and reintegration services may offer legal help when necessary. Guidelines issued by the National Legal Services Authority (NALSA) for Legal Services in Juvenile Justice Institutions in relation to the Hon'ble Supreme Court of India's ruling [19]dated August 19, 2011, permitting the establishment of legal assistance clinics connected to juvenile justice. These are followings:[20]

1. When a child is brought before the Board by the Police, the Board ought to call the legal aid attorney in advance, introduce the attorney to the minor and his or her parents, and explain to the minor and their family that they are entitled to legal aid representation and do not have to pay any fees to anyone for it.
2. Before holding a hearing, JJB need to provide the legal aid attorney some opportunity to speak with the minor and his or her parents.
3. The Juvenile Justice Board's ruling ought to state that a legal assistance counsel has been assigned, as well as the lawyers' names and attendance.
4. The Board shall ensure that, prior to the conclusion of the hearing, a child and his parents are given enough time to become acquainted with legal assistance counsel and have a chance to discuss the matter.
5. The Juvenile Justice Board must to guarantee that every juvenile case receives legal assistance counsel.
6. At the conclusion of each month, the Juvenile Justice Board ought to check the job done reports of legal aid attorneys and provide them with a certificate of attendance.
7. The Board must notify the State Legal Services Authority and take remedial action in the event that legal aid attorneys fail to fulfil their obligations or commit misconduct.
8. The Juvenile Justice Board and the legal aid attorneys ought to collaborate, understand, and show solidarity with one another. It might result in a radical shift.
9. By reading and taking part in seminars and trainings on juvenile justice, legal aid attorneys should get a solid grasp of juvenile justice law and juvenile delinquency.
10. The Legal Aid Lawyer should keep a journal at the center where dates of cases are consistently recorded.

[19] Sampurna Behrua V. Union of India & Ors. W.P. No. (C) No. 473/2005
[20] Guidelines in case of Sampurna Behrua V. Union of India & Ors. W.P. No. (C) No. 473/2005, https://indiankanoon.org/doc/67162757/,visited on 12 October 2023

11. A legal aid attorney should make sure that cases are handled by another attorney in their absence and that the case is not overlooked if they are on leave or are unable to attend Board on a particular day.
12. Legal aid attorneys should provide their best work and not accept cases as a charitable endeavor.
13. Legal Assistance Attorneys should bring up issues, worries and difficulties at the District Legal Services Authority's monthly meeting.
14. A legal aid attorney should keep track of every case in their file and record every day's activities.
15. A Legal Aid attorney should take on a case without waiting for JJB to contact them. One should make an attempt to pursue cases independently by reaching out to families that visit JJB.
16. A legal aid lawyer should work tirelessly to provide the best possible assistance for the children and families whose cases they take on, inspiring faith and confidence in them in the process.
17. A legal aid attorney must adhere to the requirements of being listed on the legal aid panel.
18. A Legal Aid attorney must submit their monthly work-done report to JJB for verification during the first week of each month, and they must also submit it to the relevant authorities together with an attendance certificate in order to process payments.
19. The Legal Aid Attorney must to let the client know when the next hearing is scheduled and provide their phone number so they can contact them if they have any questions.[21]

Conclusion and Suggestion

Children are the future of country. It is mandatory for state to provide legal assistant to juvenile offenders so that objectives of the constitution may be completed. It is a fundamental human right to have access to quick and affordable justice. However, in reality, the top bidders have received all legal services. High net worth individuals and major organizations are provided with excellent counsel. The poorest people should be able to benefit from a system of justice administration. The preservation of the rule of law depends on granting both affluent and poor people equal access to the legal system. For this reason, it is imperative to give legal help to women, children, and other underprivileged people who cannot afford it or who face threats to their lives, liberty, property, or reputation. But he vast majority of people in India continue to

[21]Supra note 20

live in poverty. Because of the huge expense involved, it is exceedingly difficult for them to pursue or defend a case. The necessity for free legal help for the impoverished and needy has been highlighted repeatedly by the Supreme Court and High Courts. Observing this, the Central Government included Article 39A into the Indian Constitution in 1977. The Central and State Governments are required by Article 39A of the Constitution to guarantee that the legal system operates in a way that promotes justice on the basis of equal opportunity. They are specifically required to provide free legal aid to the impoverished and make sure that they are not denied access to justice because of their financial situation or any other disability.

Legal assistance is a privilege of people and a duty of the state; it is neither a charity nor a boon. Equal justice for all should be the state's main goal. Legal assistance therefore works to guarantee that the Constitution is upheld in text and spirit and that the weaker and oppressed groups in society have access to equal justice. However, the legal aid movement has not succeeded in its objective, despite the fact that free legal assistance has been deemed an essential component of the rule of law. The goals that are set and achieved differ greatly. The absence of legal knowledge is the main barrier to the legal aid movement in India.

The rise of industrialism and urban living standards has resulted in a significant need for legal assistance. Litigation has increased significantly in the contemporary state due to the extensive body of legislation and the unavoidable intricacies of the law. Throughout the current century, legal assistance has garnered a lot of attention in the United States. Despite the unsettling aftermath of both World Wars, there has been a significant uptick in the legal aid movement. Over time, a collaboration emerged between the Bar and legal aid organizations, yielding productive leadership for the legal aid movement.

In India regarding the juvenile many legislations has passed. Before 2015 act juvenile justice act of 1986, 2000 has passed. The Juvenile Justice (Care and Protection of Children) Act of 2015 is social legal act. The Act's social and legal aspects need to work together. For this reason, there are two social workers and a magistrate on the Juvenile Justice Board.

While expanding legal assistance is a good thing, there is concern that doing so at the expense of tightening the probationary system will "legalize" the "socio legal Act." That's precisely what's taking place. The socio-legal premise is undermined by the focus placed primarily on the "disposal" of cases rather than the "rehabilitation" of cases.

In order for the JJS to truly work, it is necessary to fortify both the probationary and free legal aid programmers at the same time, allowing the CCLs to ultimately gain from both.

NALSA established a team of solicitors with CCL case experience as a result of the Sampurna Behrua case. Since the State pays them handsomely, the aspect of economic exploitation is reduced. Nevertheless, not all states have yet to fully execute this clause in its entirety. The problems with free legal assistance won't go away till then.

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